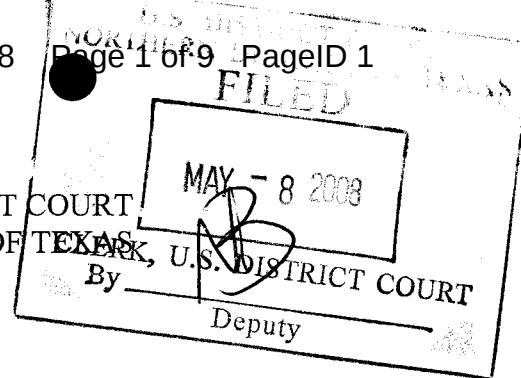


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION



BRENDA L. COTHRAN,
Plaintiff

-v-

JOHN E. POTTER, POSTMASTER
GENERAL
Defendant

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§
§

3-08CV0785-0

Civil No. _____

21727

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Now comes Brenda L. Cothran and files this Plaintiff's Original Complaint against John E. Potter, Postmaster General. Ms. Cothran alleges that she was discriminated against and retaliated against by her supervisor Angie Fuentes. In support, Ms. Cothran respectfully shows the following:

I.
JURISDICTION AND VENUE

1. Jurisdiction is proper because Plaintiffs claims arise under Federal Law. Furthermore, Plaintiff received a notice of right to file a civil action on or about February 26, 2008. This complaint is filed within ninety days of receipt of such notice.

2. Venue is proper because the events giving rise to this claim arose in Dallas County, Texas.

II.
PARTIES

3. Brenda L. Cothran is an individual who resides in Dallas County, Texas.

4. Defendant John E. Potter, Postmaster General is the administrative head of the United States Postal Service.

III. FACTS

5. Plaintiff is employed by the United States Postal Service as a Health Resource Management Specialist.

6. Plaintiff works in the injury compensation office in Dallas, Texas.

7. Plaintiff began working in this position on or about June, 2003.

8. At all times, Plaintiff has been an exemplary employee of the Postal Service.

9. In April, 2006, Angie Fuentes became the manager of Injury Compensation and Plaintiffs supervisor.

10. Plaintiff's second-level supervisor was Denise Cameron.

11. Plaintiff worked a small regular case load of injury claims and was during the relevant time period the sole specialist responsible for third party claims.

12. Ms. Fuentes is Hispanic.

13. Ms. Fuentes believes that she is not treated as well African-American employees.

14. On October 31, 2000, Ms. Fuentes filed an Equal Employment Opportunity Complaint alleging discrimination against her based on, among other factors, race, national origin, and retaliation.

15. Ms. Fuentes ultimately filed suit in United States District Court.

16. Ms. Fuentes lost that suit at the Summary Judgment stage.

17. Ms. Fuentes appealed that case to the United States Court of Appeals for the Fifth Circuit.

18. Ms. Fuentes again lost at the Fifth Circuit level.

19. In reviewing her appeal, the Fifth Circuit concluded that Ms. Fuentes was not discriminated against “in an attempt to hire and promote black employees.”

20. Ms. Fuentes’ claims against the Postal Service were factually baseless.

21. Ms. Fuentes’ claims against the Postal Service were legally baseless.

22. When Ms. Fuentes became the manager of injury compensation, she was returning from an absence that began on or about August, 1999.

23. In order to eliminate a back log of claims, Ms. Fuentes had the employees perform a “blitz” on all of the claims except for Plaintiff’s claims.

24. When Plaintiff asked that a blitz be performed on her claims, Ms. Fuentes denied the request.

25. The claims for which Plaintiff was responsible were third party claims.

26. In addition to Plaintiff’s existing workload, Ms. Fuentes began assigning Ms. Cothran, for the first time, injury claims.

27. Ms. Fuentes brought in two clerks to assist with office work.

28. Ms. Fuentes asked the clerks to perform an analysis of Plaintiff’s performance.

29. Ms. Fuentes instructed the clerks to go through Plaintiff’s files and make a spreadsheet of the claims paid in Plaintiff’s cases to see how much money Plaintiff had lost the agency.

30. Ms. Fuentes threatened to give the report to the District Manager.

31. From time to time Claims Specialists working in the office went on vacation.

32. Gloria Longoria, Hispanic, was on vacation from approximately October 10-16, 2006.

33. Kim Paulison, Caucasian, was on vacation from approximately August 7-14, 2006.

34. Plaintiff was on vacation from August 7-14, 2006.

35. While Plaintiff was away on vacation, Ms. Fuentes and Sherry Wilson, Caucasian, entered Plaintiff's workspace.

36. Ms. Fuentes and Ms. Wilson rearranged the workspace, removed files from how they had been specifically arranged by Plaintiff, making it substantially more difficult for Plaintiff to perform her duties.

37. Ms. Fuentes and Ms. Wilson never asked Plaintiff for permission before invading her office.

38. Plaintiff discovered the actions of Ms. Fuentes and Ms. Wilson upon her return from vacation.

39. Previously, Plaintiff had never made a claim of discrimination in the workplace.

40. However, after noting that employees of other races did not have their personal space violated, Plaintiff concluded that race was one of the reasons why Ms. Fuentes and Ms. Wilson did not respect Plaintiff's workspace and work product.

41. Pursuant to the Postal Service's own requirements, Plaintiff filed an internal EEO complaint of discrimination on November 16, 2006.

42. Ms. Fuentes was informed of the EEO complaint on November 27, 2006.

43. On November 29, 2006, just two days after learning of the complaint, Ms. Fuentes entered Plaintiff's performance ratings.

44. Ms. Fuentes gave Plaintiff an overall rating of five, with ratings on individual core requirements of zero, zero, fourteen, and six.

45. In particular, Plaintiff was given a zero in the category of "PR's Require and Rating" while all other Claims Specialists in the unit who were ranked regarding this criteria were given a score of six.

46. The category of "PR's Require and Rating" is based off of a unit score, not an individual's performance.

47. By giving Plaintiff a score of zero for "PR's Require and Rating," Ms. Fuentes effectuated a lower merit pay increase.

48. The consequences of this denied increase will continue for duration of Plaintiff's career with the Postal Service.

49. Ms. Fuentes also claims that Plaintiff had only processed twenty-five claims, while other Claims Specialists had processed approximately two hundred claims.

50. This analysis is wholly inaccurate because Plaintiff had done approximately one hundred and eighteen claims.

51. Ms. Fuentes marked Plaintiff as AWOL for FMLA leave.

52. This retaliation was reversed by Denise Cameron and HR Manager.

53. Ms. Fuentes similarly marked Plaintiff as AWOL for scheduled vacation.

54. Ms. Fuentes marked Plaintiff as AWOL for two hours.

55. Plaintiff had called in to inform the office that she was going to attend her son's performance at school and would be in shortly thereafter.

56. Eileen Colburn gave Plaintiff permission.

57. Non-African American employees, including Gloria Longoria, were not similarly marked as AWOL when they were late.

58. On information and belief, the other individuals did not call in and gave the excuse of oversleeping to explain their tardiness.

59. The explanation given to Plaintiff regarding Ms. Fuentes' behavior was that Ms. Fuentes was a bad manager.

60. All conditions precedent to the bringing of this suit have been satisfied or been fulfilled.

IV.

FIRST CAUSE OF ACTION: RACE DISCRIMINATION

61. Plaintiff is African-American.

62. Plaintiff suffered adverse employment action.

63. The adverse action occurred because of Plaintiff's race.

64. Defendant's proffered reason for the discrimination is insufficient to meet the requirement of the burden of production or otherwise is pretext for race discrimination.

65. Because of the actions of Defendant, Plaintiff suffered damages.

V.

SECOND CAUSE OF ACTION: RETALIATION

66. Plaintiff engaged in protective activity by filing a complaint of discrimination with the Postal Service's internal EEO office.

67. Plaintiff suffered adverse employment action and/or material harm.

68. Plaintiff suffered harm because she engaged in the protected activity.

69. Because of the actions of Defendants, Plaintiff suffered damages.

VI.

JURY DEMAND

70. Plaintiff exercises her right and demands a jury.

VII.
DAMAGES

71. Plaintiff seeks her actual economic damages, including lost wages and benefits, as well as incidental costs.

72. Plaintiff seeks lost economic opportunity and damage to her professional reputation.

73. Plaintiff seeks compensatory damages in an amount to be decided by the jury after hearing all of the evidence.

74. Because the act of Defendant was performed with malice or reckless disregard to Plaintiffs federally protected rights, Plaintiff seeks punitive damages in amount to be decided by the jury after hearing all of the evidence.

75. Plaintiff seeks her actual attorney fees. Plaintiff has hired the undersigned counsel her to represent her and agreed to pay him a discounted hourly rate of \$310 per hour for services rendered in this lawsuit.

76. Plaintiff seeks all out-of-pocket costs incurred in this lawsuit.

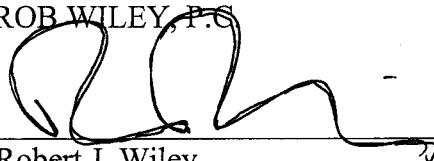
77. Plaintiff seeks pre and post-judgment interest at the maximum amount allowed by law.

78. Plaintiff requests any other and further relief to which she is justly entitled, whether at law or in equity.

VIII.
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendants be cited to appear and that, upon a trial on the merits, that Plaintiff be awarded all damages sought herein.

Respectfully submitted,
ROB WILEY, P.C.

A handwritten signature in black ink, appearing to read 'Rob Wiley', with a long horizontal flourish extending to the right.

Robert J. Wiley
Texas Bar No. 24013750
Board Certified in Labor and Employment Law
Texas Board of Legal Specialization
Turtle Creek Tower 310
3131 Turtle Creek Boulevard
Dallas, Texas 75219
Telephone: (214) 528-6500
Facsimile: (214) 528-6511
Attorney for Plaintiff

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained here in neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Brenda Cothran

(b) County of Residence of First Listed Plaintiff Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert J. Wiley, Law Office of Rob Wiley, P.C., 3131 Turtle Creek Blvd., Ste. 310, Dallas, TX 75219 (214) 528-6500

DEFENDANTS

John E. Potter, Postmaster General

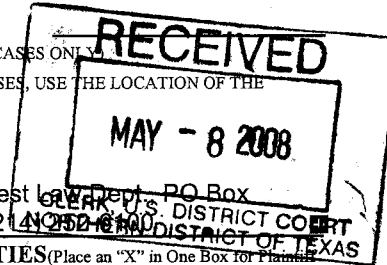
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Tammy S. Barrow, USPS Southwest Law Dept., P.O. Box 227078, Dallas, TX 75222-7078 (214) 552-6840



II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title VII of the Civil Rights Act of 1964

Brief description of cause:
Race Discrimination and Retaliation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) PENDING OR CLOSED

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/25/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____